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Jan. 10, 2022

BY ECF

Hon. May Kay Vyskocil
USDJ-SDNY
Daniel P. Moynihan US Courthouse
Room 18 C
500 Pearl St.
New York, NY 10007-1312

Re: *US v. Jorge Navarro, et al.*, S6 20 Cr. 160 (SDNY) (MKV)

Dear Judge Vyskocil:

On behalf of Dr. Seth Fishman, the defense respectfully requests that the Court charge the jury in this case in line with Judge Sand's *Modern Federal Jury Instructions-Criminal*, and/or the Court's usual instructions, on the following topics as applicable: Role of the Jury (Instr. 2-3); Juror Obligations (Instr. 2-4); Government as Party (Instr. 2-5); Conduct of Counsel (Instr. 2-8); Reprimand of Counsel (Instr. 2-9); Counsel Cooperation (Instr. 2-10); Improper Considerations (Instr. 2-11); Indictment Not Evidence (Instr. 3-1); Consider Only the Charges (Instr. 3-3); Consider Each Defendant Separately (Instr. 3-5); Multiple Counts-One Defendant (Instr. 3-6); Multiple Defendants-One Count (Instr. 3-7); Multiple Counts-Multiple Defendants (Instr. 3-8); Venue (Instr. 3-11); Variance-Amounts (Instr. 3-13); Knowingly (Instr. 3A-1); Willfully (Instr. 3A-3); Intentionally (Instr. 3A-4); Presumption of Innocence and Burden of Proof (Instr. 4-1); Reasonable Doubt (Instr. 4-2); Number of Witnesses and Uncontradicted Testimony (Instr. 4-3); Marshalling Evidence (Instr. 5-1; ¶ 5 only); Questions (Instr. 5-3); Testimony etc. (Instr. 5-4); Judicial

Hon. Mary Kay Vyskocil
Jan. 10, 2022
Page 2

Notice (Instr. 5-5); Stipulation of Testimony (Instr. 5-7); Tape Transcripts (Instr. 5-9); Charts and Summaries (Not Admitted as Evidence) (Instr. 5-13); Impeachment of Reputation Testimony (Instr. 5-17); Admission of Defendant (Instr. 5-19); Admission of Codefendant (Limiting Instruction) (Instr. 5-20); Improper Consideration of Defendant's Right Not to Testify (Instr. 5-21); Similar Acts – Intent, Knowledge, Absence of Mistake (Instr. 5-25); Similar Acts – Identity, Common Scheme, Plan or Preparation (Instr. 5-26); Inference Defined (Presumptions) (Instr. 6-1); Impermissible to Infer Participation from Mere Presence (Instr. 6-3); Impermissible to Infer Participation from Association (Instr. 6-4); Consciousness of Guilt from False Exculpatory Statement (Instr. 6-11); Witness Credibility – General Instruction (Instr. 7-1); Bias and Hostility (Instr. 7-2); Interest in Outcome (Instr. 7-3); Accomplices Called by the Government (Instr. 7-5); Unindicted Co-Conspirator as Government Witness (Instr. 7-7); Statutory Immunity of Government Witness (Instr. 7-8); Informal Immunity of Government Witness (Instr. 7-9); Witness Using or Addicted to Drugs (Instr. 7-9.1); Government Witness – Not Proper to Consider Guilty Plea (Instr. 7-10); Codefendant's Plea Agreement (Instr. 7-11); Impeachment by Felony Conviction-Non-Defendant (Instr. 7-12); Government Informers (Instr. 7-14); Law Enforcement Witness (Instr. 7-16); Prior Perjury (Instr. 7-18); Impeachment by Prior Inconsistent Statement (Instr. 7-19); Identification Testimony (Instr. 7-20); Expert Witness (Generally) (Instr. 7-21); Testimony as Both Expert and Lay Witness (Instr. 7-24); Good Faith (Instr. 8-1) (to be amplified later per ¶ 2 below); Submitting the Indictment (Instr. 9-4); Duty to Consult and Need for Unanimity (Instr. 9-7); Unanimity of Theory (Instr. 9-7.1); Lesser Included Offense (Instr. 9-10).

In addition, Dr. Fishman respectfully reserves the right to supplement these requests with proposed theory-of-defense instructions as the record develops at trial, *see, e.g., US v. Rowland*, 826 F.3d 100, 115 (CA2 2016) (accused entitled to instructions on any defense theory with record support, no matter how weak or incredible), and to object to and

Hon. Mary Kay Vyskocil
Jan. 10, 2022
Page 3

otherwise comment on any charges the government may request.

Respectfully,

A handwritten signature in black ink, appearing to be 'Marc Ferlich', written over the printed name.

Marc Ferlich

cc: All Counsel (ECF)